

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Monday, September 8, 2003

The Kiva
City Hall
Scottsdale, Arizona

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CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Monday, September 8, 2003 in the Kiva, City Hall, at 5:03 P.M.

ROLL CALL

Present:

Mayor Mary Manross
Vice Mayor Ned O'Hearn
Council Members David Ortega, Tom Silverman, Robert Littlefield,
Wayne Ecton, and Cynthia Lukas

Also Present:

City Manager Jan Dolan
City Attorney Brad Woodford
City Clerk Carolyn Jagger

Pledge of Allegiance

Vice Mayor O'Hearn led the audience in the Pledge of Allegiance.

Appointment

Consideration of Appointment of Carolyn Jagger as City Clerk

Mayor Manross explained that Carolyn has been with the city as Deputy City Clerk for approximately a year. Council has discussed this matter in depth, met with Carolyn, and agreed upon employment terms.

COUNCILWOMAN LUKAS MOVED TO APPOINT CAROLYN JAGGER AS CITY CLERK AS PER THE EMPLOYMENT TERMS OUTLINED IN COUNCIL'S SEPTEMBER 4TH MEMO. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

Reappointment

Consideration of Reappointment of The Honorable James G. Blake as Associate City Judge

Mayor Manross explained that The Honorable James G. Blake is completing his first two-year term with the city. Before reconsidering the reappointment, the Mayor recognized the Judicial Appointments Advisory Board for their diligence.

Mayor Manross noted that the reappointment would be for two years with a fixed annual salary consistent with the other city judges.

COUNCILMAN ORTEGA MOVED TO APPOINT THE HONORABLE JAMES G. BLAKE AS ASSOCIATE CITY JUDGE AS SPECIFIED IN THE EMPLOYMENT AGREEMENT PREVIOUSLY AGREED UPON. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

Public Comment - NONE

CONSENT AGENDA **ITEMS 1 - 11**

- 1. Engineering Services Contract for McDonald Drive Street Improvements – Scottsdale Road to 78th Street**
Request: Authorize Engineering Services Contract 2003-134-COS with Carter Burgess, Inc., in the total amount of \$85,130.00 for preparation of a Design Concept Report for McDonald Drive Street improvements from Scottsdale Road to 78th Street.
Related Policies, References:

 - Proposed Master Streets Plan, 2003
 - Bond 2000 CIP Project

Staff Contact(s): Corey E. Lew, Project Manager, 480.312.7769, clew@scottsdaleaz.gov; Al Dreska, Capital Project Management Administrator, 480-312-2776, adreska@scottsdaleaz.gov
- 2. Construction Bid Award for Water Distribution System Improvements at Reservoirs 36-1, 36-4, and 31.**
Request: Authorize Construction Bid Award No. 04PB002 to MGC Contractors, Inc., the lowest responsive bidder, at their lump sum bid of \$378,648.00 for the construction of water distribution improvements at three City reservoir sites, 36-1 at 142nd St. & Shea, 36-4 at 139th Pl. & Shea, and 31 at Earll & 82nd St.
Staff Contact(s): Alison Tymkiw, Project Manager, 480-312-7985, atymkiw@ScottsdaleAZ.gov; Al Dreska, Capital Project Management Administrator, 480-312-2776, adreska@scottsdaleaz.gov
- 3. Two-year lease extension for the Citizen Service Center at Papago Plaza**
Request: Adopt Resolution No. 6354 authorizing Agreement No. 2000-156A-COS with the Malouf Trusts to provide a second two-year extension of Lease Agreement No. 2000-156-COS for the lease of 1,262 S.F. of office space for a joint Citizen Service Center and Beat 3 Police Department neighborhood office at Papago Plaza, 7111 E. McDowell Road.
Related Policies, References:

 - Resolution No. 5623 authorizing Lease Agreement No. 2000-156-COS was adopted September 18, 2000.
 - Resolution No. 5909 authorizing a two-year extension of Lease Agreement No. 2000-156-COS was adopted September 4, 2001.

Staff Contact(s): Lisa Collins, Customer Service and Communication Director, 480-312-7616, lcollins@scottsdaleaz.gov; Ron King, Asset Management Coordinator, 480-312-7042, rking@scottsdaleaz.gov
- 4. Removed from the consent agenda for separate discussion. See page 6**
- 5. Construction Bid Award for Demolition and Tree Salvage at the Future Chaparral Water Treatment Plant site located at the southeast corner of McDonald and Hayden Roads**

Request: Authorize Construction Bid Award No. 04PB014 to Breinholt Contracting, Inc., Inc., the lowest responsive bidder, at their lump sum bid of \$168,562.73.

Staff Contact(s): Bill Peifer, Project Manager, (480) 312-7869, bpeifer@scottsdaleaz.gov; Al Dreska, Capital Project Management Administrator, 480-312-2776, adreska@scottsdaleaz.gov

6. Architectural Services Contract for the WestWorld Restroom Facility CIP Project

Authorize Architectural Services Contract 2003-116-COS with Carter Burgess in the total amount of \$64,340.00 for the design of a new restroom/shower/laundry building at WestWorld.

Related Policies, References:

- Development Review Board (Case #116-DR-93 #2,3 & 4) May 1994 related to WestWorld entry signage, re-vegetation, and Western Theme Park
- Planning Commission (Case # 20-ZN-1995#2) January 28, 2003 – WestWorld Master Development Plan
- City Council – WestWorld Master Development Plan, March 18, 2003
- Development Review Board (Case #41-DR-2003) July 10, 2003 – WestWorld Design Guidelines

Brad Gessner, WestWorld General Manager, (480) 312-6825, bgessner@scottsdaleaz.gov

Annette Grove, , Capital Project Management, Sr. Project Manager, (480) 312-2399, agrove@scottsdaleaz.gov

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, stated his belief that this facility has been a money-losing proposition for some time. He stated that the Federal government owns it; however, the city keeps pouring money into it. He pointed out that the Citizen's Budget Committee made several recommendations to Council which were not implemented including: 1) the facility should demonstrate the ability to become self-sufficient; 2) an enterprise fund should be created to ensure all costs are balanced against the associated revenue; 3) a five-year financial plan should be created and, 4) fees should be reviewed annually.

Mayor Manross closed public testimony.

Mayor Manross explained that the facility is an important amenity for the city, which brings in many more dollars than it actually costs to run the facility. She explained that item 6 is consideration of building new restroom facilities at the park.

7. Construction Contract Award for intersection improvements at Frank Lloyd Wright Boulevard (FLWB) and Greenway/Hayden Road.

Request: Authorize Construction Contract Award No. 03PB131 to CPC Construction Inc., the lowest responsive bidder, at their total unit price bid of \$217,181.53 for the construction of intersection improvements at Frank Lloyd Wright Boulevard and Greenway/Hayden Road.

Staff Contact(s): Alex McLaren, Construction & Design Director, amclaren@ci.scottsdale.az.us, (480) 312-7099

Councilman Ecton expressed his belief that this is the perfect example of how the city has let developers off the hook in paying for developments and growth in an area.

He stressed that the \$200,000 the city is spending is necessary; however, the city must consider that there is an impact in other parts of the city when development occurs.

8. Enter into a contract for legal counsel in the Arizona General Stream Adjudication.

Request: Adopt Resolution No. 6368 authorizing the Mayor to enter into Intergovernmental Agreement No. 2003-145-COS, between the cities of Scottsdale, Glendale, Mesa and Chandler to provide for joint funding for outside legal counsel in the Arizona General Stream Adjudication, and corresponding Agreement No. 2003-144-COS which sets forth payment and insurance provisions which are unique to Scottsdale's preferred form of consultant agreement.

Related Policies, References: The City is a party to the Arizona General Stream Adjudication, a massive lawsuit to apportion rights to the surface waters of Arizona.

Staff Contact(s): Janis Villalpando, 480-312-2472, jvillalpando@scottsdaleaz.gov

Councilman Ecton stated his belief that this contract is worthwhile and necessary. He stressed the importance of cooperating with other communities to ensure adequate water supply. He noted that he recently attended the League of Cities Conference where it became increasingly apparent that the city must continue to pay special attention to joint efforts with other cities regarding water agreements.

9. Construction Bid Award for improvements to Pinnacle Vista Drive east of Alma School Road

Request: Authorize Construction Bid Award No. 03PB128 to Northern Arizona Systems Corporation, the lowest responsive bidder, at their lump sum bid of \$125,600 for construction of improvements to Pinnacle Vista Drive east of Alma School Road.

Related Policies, References: This project will assist in meeting Maricopa County Rule 310.01 (MCR 310.01), Fugitive Dust Sources on Unpaved Roadways

Staff Contact(s): Alex McLaren, Construction and Design Director, 480-312-7099
amclaren@scottsdaleaz.gov

10. Architectural Design Services for the Teen Center at the Civic Center Library.

Requests:

1. Authorize a capital contingency transfer for budget authority only in the amount of \$506,000 for a new CIP project entitled "Teen Center at Civic Center Library." Donated funds will be used for this project.

Councilman Ecton stressed that this is a worthwhile project that he is excited to see move forward. He questioned; however, if existing staff would be able to meet the needs of the center.

Mayor Manross stated her belief that this is a good step. She noted that the Friends of the Library have taken this on as their project by accepting private donations to ensure that the project doesn't impact the city's budget.

Councilwoman Lukas pointed out that library staff met with teens on two different occasions to determine what they would like to see in the teen center. She also stated that she is excited about moving this project forward.

Councilman Ortega noted that the library system depends on volunteers. He stated that a learning center with Internet access has also been implemented to serve the community.

11. Wastewater Supplement to the Dynamite Foothills Local Area Master Plan

Request: Authorize Engineering Services Contract No. 2003-138-COS with Primatech, LLC, in the amount of \$101,600.00 to provide conceptual design and recommendation of options to provide wastewater service to the east Dynamite corridor.

Related Policies, References:

- a. Water Resources Master Plan, approved by City Council on October 15, 2001.
- b. Dynamite Foothills Local Area Master Plan (Draft), dated October 1, 2002.

Staff Contact(s): Doug Mann, Senior Water Resources Engineer, 480-312-5636, dmann@scottsdaleaz.gov; Dave Mansfield, Water Resources General Manager, dmansfield@scottsdaleaz.gov

Vice Mayor O'Hearn questioned how this item ties into the Scottsdale National Property. Mr. Klingler explained that Scottsdale National is in the vicinity. The area is at the edges of the city's system and is being developed in separate subdivisions; therefore, coordinated standards are necessary. He noted that specifics on Scottsdale National are included.

In response to additional questions from Vice Mayor O'Hearn, Mr. Klingler confirmed that the obligations for the developer of Scottsdale National would not change. He noted that the developers are still obligated to meet their requirements.

Vice Mayor O'Hearn stated his understanding that this item represents no conflict and it was anticipated all along that the study would have taken place even if the Scottsdale National project was moving forward. Mr. Klinger explained that, in general, the idea is that the city would have overall standards and guidelines that would be appropriate for the area.

COUNCILMAN SILVERMAN MOVED TO APPROVE CONSENT ITEMS 1, 2, 3, 5, 6, 7, 8, 9, 10, AND 11. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION

4. Construction of Pima Road Buffering Wall and Shea Boulevard Path

Requests:

- 1. Authorize construction bid award No. 03PB116 to Bison Contracting Co., Inc., the lowest responsive bidder, at their unit price bid of \$1,142,755.15 for construction of the Pima buffering wall, along with a water transmission main, Intelligent Transportation System (ITS) conduit and pedestrian enhancements from Inner Circle to south of Via de Ventura and construction of a multiuse path along the south side of Shea Boulevard between 136th Street and 142nd Street
- 2. Authorize payment in the amount of \$28,445.00 to Salt River Project for installation and modification of electrical facilities along Shea Blvd.

Related Policies, References.

Authorization of Engineering Services Contract No. 2001-101-COS for the design of the Pima Road Buffering Wall and the Shea Boulevard Multiuse Path by City Council on July 1, 2002.

Staff Contact(s): Marek Urbanek, Project Manager, (480) 312-2563, murbanek@scottsdaleaz.gov; Al Dreska, Capital Project Management Administrator, 480-312-2776, adreska@scottsdaleaz.gov

Councilman Ecton questioned if the proposed wall is necessary due to the rubberized asphalt that is being applied to Highway 101. Al Dreska explained that the Pima buffering wall from McDowell Road northerly was to provide buffering from adjoining Pima Road. Although traffic on Pima Road has decreased dramatically with the advent of the freeway, the traffic volumes are projected to rise in future years. The need for the Pima buffering wall is to buffer the neighborhoods from adjoining Pima Road. It would also add an element of security for the neighborhood while providing consistency.

COUNCILMAN ECTON MOVED TO **AUTHORIZE** CONSTRUCTION BID AWARD NO. 03PB116 TO BISON CONTRACTING CO., INC., THE LOWEST RESPONSIVE BIDDER, AT THEIR UNIT PRICE BID OF \$1,142,755.15 FOR CONSTRUCTION OF THE PIMA BUFFERING WALL, ALONG WITH A WATER TRANSMISSION MAIN, INTELLIGENT TRANSPORTATION SYSTEM (ITS) CONDUIT AND PEDESTRIAN ENHANCEMENTS FROM INNER CIRCLE TO SOUTH OF VIA DE VENTURA AND CONSTRUCTION OF A MULTIUSE PATH ALONG THE SOUTH SIDE OF SHEA BOULEVARD BETWEEN 136TH STREET AND 142ND STREET; AND **AUTHORIZE** PAYMENT IN THE AMOUNT OF \$28,445.00 TO SALT RIVER PROJECT FOR INSTALLATION AND MODIFICATION OF ELECTRICAL FACILITIES ALONG SHEA BLVD. COUNCILMAN SIVLERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

Regular Agenda

12. Proposed WestWorld Rates and Fees Schedule and Financial Guidelines

Request: Adopt Resolution No. 6366, authorizing the WestWorld Rates and Fees Schedule. The Proposed 2004 Fee Schedule includes a five percent (5%) rate and fee increase, a proposed "manure haul off" rate increase from \$5.00 per stall per show to \$7.50 per stall per show, and excludes increases to billable hourly labor rates and specified equipment rental rates.

Related Policies, References:

- Cost Sharing and Recreational Land Use Agreement For Use of the WestWorld Property between the United States Bureau of Reclamation (BOR) and the City of Scottsdale (Agreement), dated July 29, 1982. Article IV, Section A of the Agreement requires that "not less often than every five years, the parties will review [the] fee schedule and, upon request of either, renegotiate the schedule".
- Resolution No. 6065: A Resolution of the Council of the City of Scottsdale, Arizona, Approving and Adopting a Revised WestWorld Rates and Fees Schedule, Effective January 1, 2003.
- Resolution No. 6288: A Resolution of the City of Scottsdale, Arizona, Establishing Financial Policies Section 1. Operating Management Policy Number 9: "All non-enterprise user fees and charges will be examined annually to determine the direct and indirect cost of service recovery rate. The acceptable recovery rate and any associated changes to user fees and charges will be approved by the City Council".

Staff Contact(s): Bryan R. Bundy, Sr. Financial Analyst, (480) 312-7708, bbundy@ScottsdaleAZ.gov; Craig Clifford Chief Financial Officer, 480-312-2364, cclifford@scottsdaleaz.gov

Chief Financial Officer Craig Clifford introduced item 12 with a brief slide presentation, which has been outlined below.

Westworld Rates & Fees Craig Clifford, CFO

Background

- FY2001/02 Operations Rate & Fee Study
 - Compared to other equestrian and special event facilities (did not address capital projects)
 - Five year cumulative inflation rate since re-acquiring Westworld in 1997 was 12.5%
- Findings:
 - Rental rates and fees were below the average fees surveyed in comparative facilities
 - On average, comparative facilities recovered all operating expenses
- Adopted 5% fee increase and \$15 hour labor effective Jan 2003
- Additional 5% fee increase tabled for discussion in 2003/04
- FY2003/04 Citizen Budget Committee recommended annual fee review
- FY2003/04 Adopted Financial Policies recommend annual fee review

Rate & Fee Proposal

- What it does address:
 - Direct revenue and expenditure analysis for Westworld
 - Rental rates & fees associated with specific arenas and facility uses
 - Operating facility cost recovery for an equestrian facility
- What it doesn't include:
 - Indirect City administrative overhead cost allocations
 - Individual event contracts and negotiable terms
 - Economic impact estimates from Westworld events
 - Event subsidies & City traffic control costs
 - Capital improvement plan costs

Assessment

- FY2001/02 Study determined many rates and fees were more than 10% below the average rates of other similar facilities
- Proposed 5% fee increase will result in more comparable fees to other similar facilities
- Manure haul-off rate recommended to increase from \$5 to \$7.50 per stall to cover substantial increases in the cost of this particular service
- Labor rate is recommended to remain at \$15 hour, which reflects a blended labor rate for Scottsdale staff and contractual personnel at Westworld
- Equipment rental rates are recommended to remain as competitively priced

Budget Implications

- Proposed fee increase will result in \$18,000 additional revenue for FY2003/04 and \$40,000 for FY2004/05
- Proposed 5% fee increase will result in more comparable fees to other similar facilities

Recommended Action

- Adopt Resolution No. 6366, authorizing the Westworld Rates & Fees Schedule
- The proposed 2004 Fee Schedule includes a 5% increase, and a proposed “manure haul-off” rate increase from \$5.00 to \$7.50 per stall, per show, excluding increases to billable hourly labor rates and specified equipment rental rates.

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, stated his belief that the fee increases over the last ten years along with the proposed increase are minimal while costs continue to escalate. He urged Council to ensure that the facility is self-sustaining with fees being raised according to costs.

Barbara Dietz, 10010 E. Gary Road, spoke as a representative of the Arizona Sun Country Circuit Quarter Horse Show. She explained that the events held at WestWorld are struggling with increased costs. She reminded everyone that 75% of the events held at WestWorld are equestrian run by non-profit associations. She stressed that a 5% increase would take a toll on the events. She stated that the facility is not losing money when indirect revenue that is generated by the facility is taken into consideration.

Jay Allen, P.O. Box 13865, spoke as a representative for the Arabian Horse Association of Arizona. He explained that the association doesn't support a rate increase due to the lack of improvements, although he noted that some are “in the works”. He felt the cost increases would be cost prohibitive for the smaller events.

Councilman Ortega pointed out that Council approved item 6 tonight for architectural services to move forward with restroom facilities at WestWorld. He stated that this would help relieve sponsors of the events on rental of portable facilities. He explained that improvements are moving ahead step-by-step.

Councilman Ecton clarified that the Bureau of Land doesn't own Westworld; they own the land the facility operates on. The city is spending money on the facility, which pumps about \$40 million per year into the local economy. When this is factored in, the facility isn't losing money. He explained that the city provides services to residents in many areas such as buses, parks, etc. He noted that he couldn't differentiate WestWorld completely from that category. He explained that the city wants a first class facility there and is working in that direction.

Councilwoman Lukas noted that she is sympathetic to the sponsors of the horse shows since they are a good amenity to the city. Although she explained that she would not want to price the shows out of the market, it has become prudent for the city to raise its rates. Council has agreed to raise the rates on a gradual basis.

Councilman Silverman stressed the importance of the facility to the local tourism industry. He stated his belief that the increase has been fair since it is spread out over a few years and has been communicated to the users of the facility.

Mayor Manross explained that WestWorld has been going through a growing phase while trying to balance the needs of the users.

COUNCILMAN ORTEGA MOVED TO **ADOPT** RESOLUTION NO. 6366, AUTHORIZING THE WESTWORLD RATES AND FEES SCHEDULE. THE PROPOSED 2004 FEE SCHEDULE INCLUDES A FIVE PERCENT (5%) RATE AND FEE INCREASE, A PROPOSED "MANURE HAUL OFF" RATE INCREASE FROM \$5.00 PER STALL PER SHOW TO \$7.50 PER STALL PER SHOW, AND EXCLUDES INCREASES TO BILLABLE HOURLY LABOR RATES AND SPECIFIED EQUIPMENT RENTAL RATES. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

13. Scottsdale First Assembly of God

Request: Initiate a review of the Development Review Board approval for the Scottsdale First Assembly of God Dream Center.

Location: South of the Southwest corner of Pima Road and Via Dona Road

Reference: 36-DR-2003

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Kroy Ekblaw introduced item 13 with a brief slide presentation that has been outlined below.

36-DR-2003 - Dream Center

- To consider appeal of the Development Review Board Decision regarding site plan and elevation approval

Options for City Council

- Vote to appeal Development Review Board's Decision
 - a public hearing will be scheduled within 15 to 40 days
- Vote to not appeal Development Review Board's decision
 - Development Review Board Decision stands

Building Height

- Underlying zoning allows 30-foot buildings with 45-foot tall towers
- Foothills zoning allows 40-foot tall churches (with large setbacks)
- ESL allows 24-foot buildings, with exceptions not to exceed the underlying zoning
- DRB approved the exception for the 40-foot tower

Mr. Ekblaw noted that the site consists of approximately 24 acres.

Vice Mayor O'Hearn explained that he requested that this item be placed on the agenda for Council's consideration to clarify the approved changes to ESLO on April 1st. He encouraged speakers to limit their comments to the procedural issues. He noted that the Council clearly confirmed the ESLO 24' height limit. He explained that during the meeting, Council directed that several of the issues be brought forward for Council's review within six months.

Vice Mayor O'Hearn explained that during the April 1st meeting, Councilman Ecton was very specific in his questions to City Attorney Pennartz to ensure that the choices available to Council would not be violating any laws. He emphasized that it was clear that the height limit was 24' and there would be a

variance process in place to review the requests on a case-by-case basis. He suggested that the ambiguity was created when a detailed process was not outlined for clarity and agreement. He stated his belief that when a variance is requested, it would go through a series of steps and processes. As it turned out, the variance process was written in such a way that an applicant could go to the DRB to request the change that would be approved or denied.

In response to questions from Vice Mayor O'Hearn, Mr. Ekblaw explained that there are different ways a variance could be structured. The ordinance does speak to a variance procedure that would go through the Board of Adjustment that would meet certain criteria as established by state statutes and confirmed by the city's ordinances. He stated that the structure of the ESLO was written in such a way that the variance process involved the Development Review Board.

Vice Mayor O'Hearn questioned if the proposed review process was included in staff's presentation. Mr. Ekblaw explained that he was not in attendance at the April 1st meeting; therefore, he would have to review the tape of the meeting.

Vice Mayor O'Hearn explained that he was unaware on April 1st that the variance process would be as simple as it was written. He emphasized that tonight's consideration is about process not about the actual church design.

Councilman Ortega clarified that Council received a memo from Randy Grant stating that the Scottsdale First Assembly of God case as approved meets all the ordinance, setback, and height requirements. Council also received a follow up memo from the City's Attorney stating that the property also meets the ordinance, the intent of the ordinance, and is legal.

He explained that he was concerned on April 1st that churches would have special consideration due to assembly space requirements. He pointed that height and setback requirements vary with different size lots. He stated that the setbacks are adequate this case due to the size of the lot.

Councilman Ecton clarified that this item is on the agenda for discussion due to the fact that the DRB approved an exception in height from 24' to 40'. He noted that special circumstances apply to the church since it is being built in a residentially zoned area. The DRB is authorized to approve variances of up to 45' in height in this district if it is appropriate with the character of the neighborhood. He quoted the section of the city's zoning ordinance that allows City Council to initiate its own review of any of the DRB's decisions, and uphold, modify, or over-rule the said decision. He emphasized that the purpose of tonight's agenda item is to allow Council to consider initiating a review of the DRB decision regarding this case. If Council conducts a review, their decision will be final.

Mayor Manross opened public testimony.

Wendy Riddell, 4800 N. Scottsdale Road, from the law firm of Beus Gilbert, spoke on behalf of the pastor and parishioners. She noted that this has been a long and arduous process. She clarified that the number of cards submitted by church members in favor of the project are in favor of the project being approved tonight as it was approved by the DRB. She explained that the steeple is a faith element that is more than 400' from the property line. She acknowledged that some members of the neighboring community believe that the steeple should not be permitted in the foothills area, although that was never the intent of the ordinance. She noted that the church would be willing to reduce the steeple height if the city could increase the church's signage allowance in the scenic corridor.

Pastor David Friend, 23487 N. 77th Place, spoke as pastor of the Scottsdale First Assembly Church. He felt it is important to understand the church is designed to serve our Lord and the community. He stated that he doesn't understand the reasoning behind slowing down the process because the city cannot determine whether there is a 24' or a 45' height restriction. He reiterated that the church has no problem with Council continuing discussion on the steeple element as long as the church can continue in the permitting process for the facility excluding the steeple element. He assured everyone that the church will be a great neighbor.

Mayor Manross questioned if it would be possible for Council to allow the church to move forward on the permitting process excluding the steeple element of the plan. City Attorney Woodford clarified that if Council votes to place the item on the agenda for review, it stays the action taken by the DRB. He stated that the only way that could happen is if the building officials would allow a partial building permit to be approved that did not include the steeple element. Mr. Ekblaw confirmed that if Council's appeal is focused on the tower element, the rest of the site could be disengaged. Staff could proceed with review of plans and permitting for the site and building improvements as long as they don't include the tower element until approved by Council.

Darlene Petersen, 7327 E. Wilshire, explained that there is not one person in the room against having the church built. She explained that she attended the DRB meeting the night the variance was approved. She wondered why the board didn't consider the compromise that the church suggested (lowering the steeple if larger signage would be allowed along the scenic corridor).

Howard Myers, 6631 E. Horned Owl Trail, stated that this Council has always been supportive of protecting the character areas of the city. He felt the height issue is extremely critical in the northern part of the city to maintain views. He explained that his only issue with the church itself is the height and the building material itself. He stressed that he has issues with the fundamental problems that allowed the process to produce this result.

Lynne Sczruba, 11454 E. Four Peaks, explained that she lives close to the church property. She noted that she is very understanding about Council's concern over this issue; however, she felt that using the church as a case to clarify the variance process isn't right. She encouraged Council to be sensitive to the fact that the church has been working for years to move this project forward.

Mayor Manross closed public testimony. One hundred and ten cards were received in favor of the proposed church project from citizens not wishing to speak.

Councilwoman Lukas pointed out that according to staff, the ordinance requirements were met and the DRB did have the authority to approve the variance. The DRB felt that the facility is an important architectural element that is appropriate and compatible with the neighborhood. She explained that she is willing to review the case if the review is limited to the height of the steeple. She stated that the city must look at the matter from all viewpoints and any precedent that the case may set.

Councilwoman Lukas explained that the DRB did discuss the matter of the signage in an Executive Session. She noted that she also asked questions in open session regarding this issue; however, since the city's sign ordinance was incomplete at that time, it was not a possibility.

Councilman Ortega pointed out that he also attended the DRB meeting when this case was presented. He explained that the signage issue is irrelevant since the sign ordinance prohibits signs in that area. He stated his belief that it is not appropriate for Council to delay the church's progress on the project.

Vice Mayor O'Hearn explained that Council is using the Dream Center as a case study since it was integral to the discussion on April 1st. He stated that he would not have been supportive of the variance process if it were clear that it would simply be a ruling by the DRB. He stated his support of allowing the church to move forward with its plans excluding the tower design.

VICE MAYOR O'HEARN MOVED TO INITIATE A REVIEW OF THE DRB APPROVAL FOR THE SCOTTSDALE FIRST ASSEMBLY OF GOD DREAM CENTER THAT IS TO BE RESTRICTED TO A DISCUSSION OF THE TOWER ELEMENT. THIS WOULD ALLOW FOR THE CHURCH TO WORK WITH STAFF TO DETERMINE IF IT IS POSSIBLE TO PROCESS THEIR PLANS EXCLUSIVE OF THE TOWER ELEMENT. COUNCILMAN SILVERMAN SECONDED THE MOTION (WHICH CARRIED 6/1 (D.O.)).

Mayor Manross stated her support for the motion since she felt some clarification is needed. She stressed that the city wants to encourage churches not discourage them.

Ms. Dolan clarified that the motion doesn't include bringing back the ESLO.

Vice Mayor O'Hearn explained that he would like to see the various components of the ESLO review (as directed by Council on April 1st) placed on the agenda as soon as possible. However, since there are a lot of issues technical in nature that will require quite a bit of deliberation, the item should be placed on a relatively light meeting agenda.

Councilman Ortega clarified that Council is in support of ESLO standards that have some flexibility. He also stated that the church itself has complied with the letter of those standards.

Councilman Ecton encouraged Council to move as quickly as possible on the ESLO issue to place it on the agenda as soon as possible so this type of situation doesn't occur in the future.

Ms. Dolan explained that the ESLO issue is intended to be placed on the agenda sometime in November since staff is still working on some of the issues to be presented.

After further discussion, THE MOTION CARRIED 6/1 (D.O.).

14. Construction Bid Award for Civic Center Mall Amphitheater and Nevelson Sculpture Re-siting

Request: Authorize Construction Bid Award No. 04PB004 to Howard S. Wright Construction, the lowest responsive bidder, at their lump sum bid of \$347,021.00.

Staff Contact(s): Bill Peifer, Sr. Project Manager, bpeifer@scottsdaleaz.gov (480) 312-7869; Al Dreska, 480-312-2776, adreska@scottsdaleaz.gov

Al Dreska introduced item 14 as a request for a construction bid award to Howard S. Wright for \$347,021. The project would involve the construction and renovation of the east mall amphitheater area. The project has a long history with this being the third design to go through the public bidding process.

Mr. Dreska presented slides illustrating the three conceptual drawings of the plans to provide a brief overview of the evolution of the design. The first two plans cost \$710,000 and \$485,000, while the cost of the currently proposed plan is \$347,000. All three of the designs carry a common theme, i.e., reduction of surface water area, replacement of all pumping system, reduced operating costs, and a drier environment for the sculpture.

He noted that the final design includes ADA accommodations, which represents a cost of approximately \$50,000, with funding available. The pool equipment is placed above ground due to the considerable cost to place the equipment underground. Landscaping and lighting along 75th Street remains relatively consistent among all three designs.

Councilwoman Lukas mentioned an email from a citizen expressing concern about the elimination of the second pool. Mr. Dreska explained his belief that the citizen may be inquiring about the return of additional pool area immediately to the north of the Nevelson pedestal. The cost to return the pool to the project is estimated between \$40,000 and \$50,000. He pointed out that the entire budget for the project has been accounted for in the third design. He confirmed that the city received three bids on this project.

LITTLEFIELD MOVED TO AUTHORIZE CONSTRUCTION BID AWARD NO. 04PB004 TO HOWARD S. WRIGHT CONSTRUCTION, THE LOWEST RESPONSIVE BIDDER, AT THEIR LUMP SUM BID OF \$347,021. COUNCILMAN ORTEGA SECONDED THE MOTION (WHICH CARRIED 7/0).

Mayor Manross opened public testimony.

Darlene Petersen, 7327 E. Wilshire Drive, explained that she was among a group of citizens who met with city staff regarding this project. She stated that the group requested two pools and were assured that they would be included in the design. She explained that if she hadn't run into a staff member in the hall, they would have never known that the plan changed. She felt this was typical.

Mr. Dreska explained that the final design, which was presented to Council this evening, has been a work product this summer. Bids were opened on the second design in June, with the lowest bid reaching a half million dollars. Since that time, staff had to make some cuts and reductions in the scope of the project to reduce costs.

Frank Maguire, 7121E. 5th Avenue, explained that this construction is important to him. He urged Council to proceed with the project. He felt the design is good considering the budget constraints.

Mayor Manross closed public testimony.

Councilman Ecton explained that he has explored possible funding sources for the additional pool. He suggested that the city explore obtaining funding for the additional pool through the Public Arts Fund. Ms. Dolan explained that the fund could possibly cover the costs associated with the additional pool; however, there is a process the city would have to follow for the Cultural Council to review and approve the expenditure of those funds.

Councilman Littlefield questioned if it is possible to separate the possibility of adding the other pool through this process. Ms. Dolan explained that the funding would need to be approved by the Public Art Committee. Staff would also have to see if the additional pool could be included in this bid since it wasn't included in the original bid. She agreed that staff could also look at this addition as a separate project.

In response to additional questions from Councilman Littlefield, Ric Alling, V.P. of Operations for the Scottsdale Cultural Council outlined the steps that would need to be taken in order for the project to be considered for funding. He estimated that the process would take several months.

Councilman Littlefield expressed his belief that there is almost no point in approving this tonight if the city is going to investigate funding sources for the additional pool.

Vice Mayor O'Hearn questioned if it would be prudent to ask the low bidder to estimate the cost for the additional pool. He noted that staff understood very clearly that Council asked that the budget be maintained. He explained that he is uncomfortable delaying the project.

Ms. Dolan explained that there are two options. In general, if the project is changed significantly, the project must be re-bid. Therefore, the feature could be added and the entire project could be re-bid, or if it could be separated, the additional pool could be processed separately.

Councilman Ortega stated his belief that this project should move forward. He cautioned that the Arts Committee might have other priorities so funding isn't assured.

Councilman Littlefield explained that staff was asked to stay within budget during the discussion in June, which they did. He stated that Council is now coming back stating that additional money should be spent. He felt that Council should approve the project as it is and if the other money is available at a later date, the additional feature could be added in the form of another project.

Councilman Ecton clarified that he is not asking for a delay. He explained that through research, he discovered the other possible funding source. To frame the sculpture in the manner in which it was intended to be displayed would be appropriate. He encouraged Council to move ahead with the project and staff to review the possibility of acquiring the additional funding.

Mayor Manross explained that staff did a terrific job of detailing a beautiful design that meets the budget. She noted that currently, the area being discussed is a beautiful area and this project will make it better yet.

Vice Mayor O'Hearn agreed that staff did a fine job of living within the budget as directed by Council. He stated his belief that the project should be approved.

After further discussion, THE MOTION CARRIED 7/0.

Public Comment - None

City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 7:24 P.M.

SUBMITTED BY:

REVIEWED BY:

Ann Eyerly, Council Recorder

Carolyn Jagger, City Clerk

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 8th day of September 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this _____ day of September 2003.

CAROLYN JAGGER
City Clerk